

Appendix 3 – EPIC’s Application for *cy pres* Funds in *In Re: Google Buzz Privacy Litigation* (submitted to the Rose Foundation Mar. 14, 2011)

Application Coversheet

1. Name of Applicant Organization and EIN Number

Electronic Privacy Information Center (“EPIC”) (EIN: 52-2225921)

Type of organization: **501c(3)**

2. Contact Information:

Contact Person, Title **Marc Rotenberg, EPIC Executive Director**

Address **1718 Connecticut Ave, NW, Suite 200
Washington, DC 20009**

Telephone **(202) 483-1140 x106**

Email **rotenberg@epic.org**

3. Financial Information:

- (a) your organization’s overall annual 2011 operating budget

\$1,063,688

- (b) total amount of money spent on Internet privacy or Internet education programs in 2010

\$1,015,950

- (c) total amount of funding your organization received, if any, in contributions from Google, Inc. or the Google Foundation in 2010

\$200⁷

⁷ EPIC received approximately \$200 in 2010 from Google as a result of matches from contributions from individual Google employees to EPIC. EPIC did not receive any contributions directly from Google or any other private company, nor does EPIC accept in-kind services, such as Google Fellows. EPIC has adopted this policy to

(d) amount of funding you are requesting from this Settlement fund

\$1,750,000

For questions 4 & 5, you may submit a narrative response up to 4 pages, BUT YOU MUST submit a brief description of no more than one paragraph. The coversheet must fit on one page.

4. Briefly describe any of your organization's existing policy or education programs concerning Internet privacy issues – make sure to include the number of years you have had programming focused on Internet privacy.

EPIC was established in 1994 to focus public attention on emerging privacy and civil liberties issues. For more than sixteen years, EPIC has remained the leading advocate in the United States for Internet users' privacy rights. EPIC pursues a comprehensive program of research, education, policy development, and advocacy that protects Internet users' rights and promotes consumer privacy. EPIC promotes Internet users' privacy rights before Congress, federal agencies, and the courts. We educate consumers through EPIC's websites, print publications, and public education events. EPIC's activities and mission are directly aligned with the interests of the class. (See attachment.)

5. Briefly describe the particular program that funding from this Settlement would support and describe how it would benefit the Class by furthering policy or education concerning Internet privacy.

EPIC seeks general funding to continue and expand several EPIC Projects and EPIC Programs that protect the privacy of Internet users. Funding from the Google Buzz cy pres Fund to EPIC would directly support privacy policy and privacy education that would advance the interests of Internet users and protect the interests of the class. (See attachment.)

EPIC's Activities Are Directly Aligned with the Class's Interests

EPIC's activities and mission are directly aligned with the interests of the class. EPIC was established in 1994 specifically to focus public attention on "emerging privacy and civil liberties issues." EPIC's core mission is to promote education and pursue policies that safeguard privacy. EPIC has pursued this mission for 17 years.

remain independent and to protect the interests of Internet users and class members.

In fact, the issues on which this settlement is based flow directly from EPIC's February 2010 filing before the Federal Trade Commission on behalf of Internet users regarding Google Buzz. It was EPIC that identified the risks to Internet users and urged the Commission to act to safeguard Internet privacy.

EPIC routinely provides research and expert commentary on emerging privacy issues. EPIC plays a leading role on behalf of Internet users in Washington, DC. Based on extensive research and careful consideration of consumer interests, EPIC files complaints with the Federal Trade Commission and the Federal Communications Commission in support of consumer protection. We comment on agency proposals that impact consumer privacy. EPIC leads efforts to establish strong privacy policies for individuals' sensitive information, and EPIC is an authoritative voice on issues as diverse as consumer privacy, identity theft, locational privacy, search engine privacy, anonymity/reidentification, and spam.

This summary provides a brief overview of EPIC's programs and activities.

EPIC Before Federal Agencies: Safeguarding the Privacy of Internet Users

Since the mid-1990s, EPIC has routinely filed comments before federal agencies on regulatory issues concerning Internet users' privacy interests. Over the years, EPIC has submitted more than 80 comments on behalf of the public in regulatory proceedings. Here are a few recent examples:

- In 2009 and again in 2010, EPIC, supported by a coalition of consumer and privacy organizations, filed complaints with the Federal Trade Commission concerning Facebook's changes to users' privacy settings as well as to the company's Terms of Service. The EPIC complaint was widely credited with promoting a national discussion about privacy safeguards for Facebook users.
- In 2009, EPIC filed an FTC complaint describing Echometrix's unlawful, covert tracking of children's online activities. Within a month, the Department of Defense shut down sales of the software company's product to military families. The New York Attorney General subsequently sanctioned Echometrix. And the FTC responded to EPIC's complaint by forcing the company to destroy data it had collected from children.
- In 2007, the FCC issued rules protecting consumers' telephone records in response to a petition filed by EPIC in 2005. At EPIC's recommendation, the FCC also undertook a rulemaking to establish further safeguards for information stored in cell phones.

- Previous complaints by EPIC at the FTC led to new security standards for Microsoft Passport and the reform of the databroker industry (Choicepoint).
- Funding from the Google Buzz *cy pres* Fund will help EPIC continue to represent Internet users' interests before federal agencies.

EPIC in Congress: The Voice of Internet Users on Privacy

Over the last 17 years, EPIC has testified in more than 60 Congressional hearings on emerging privacy and civil liberties issues. Recent Congressional hearings include:

- EPIC – “Online Privacy, Social Networking, and Crime Victimization,” House Judiciary Committee, July 28, 2010
- EPIC – “Planning for the Future of Cyber Attack Attribution,” House Science Committee, July 15, 2010
- EPIC – “Smart Grid Architecture and Standards: Assessing Coordination and Progress,” House Science Committee, July 10, 2010
- EPIC – “An Examination of Children’s Privacy: New Technologies and the Children’s Online Privacy Protection Act (COPPA),” Senate Commerce Committee, April 29, 2010
- EPIC – “The Data Accountability and Trust Act and H.R. 1319, the Informed P2P User Act,” House Commerce Committee, May 5, 2009
- Funding from the Google Buzz *cy pres* Fund will help EPIC continue to represent Internet users' interests before Congress.

The EPIC Public Voice Project

EPIC has represented Internet users' privacy interests at international meetings since 1996. EPIC is the most widely recognized US-based privacy organization in the world. EPIC has appeared at numerous conferences and hearings organized by national governments and international organizations to protect Internet users' privacy rights. For more than 15 years, EPIC has organized the annual civil society meeting held in conjunction with the annual meeting of the International Privacy Protection and Data Protection Commissioners. EPIC also participates in OECD meetings to advance Internet users' privacy interests. Moreover, the EPIC Public Voice Project, which seeks to promote civil society participation in decisions concerning the future of the Internet, organizes conference and provides funding and support to other civil society organizations.

- Funding from the Google Buzz *cy pres* Fund will help EPIC continue to represent Internet users' interests at international organizations and to enable the participation of other civil society groups in these meetings.

The EPIC Open Government Project

Since its founding in 1994, EPIC has protected Internet users' privacy through the highly regarded EPIC Open Government Project. EPIC publishes the leading FOIA guide, *Litigation Under the Federal Open Government Laws*. EPIC FOIA Requests routinely uncover surveillance proposals that implicate Internet users' privacy rights. Here are a few recent examples:

- FBI abuses under the Patriot Act
- The National Security Agency's efforts to extend control over critical Internet infrastructure
- The Department of Justice's efforts to expand data retention obligations
- The General Services Administration's deal to exempt social networking web sites from federal privacy rules
- Funding from the Google Buzz *cy pres* Fund will help EPIC continue to pursue important FOIA litigation and to safeguard Internet users' privacy rights.

The EPIC *Amicus Curiae* Project

EPIC protects Internet users' privacy through an expert "friend of the court" program that identifies emerging privacy and civil liberties issues. EPIC regularly files *amicus curiae* briefs in support of consumer privacy protections. Over 17 years, EPIC has filed more than 40 *amicus* briefs in appellate courts, including more than 15 briefs in the US Supreme Court. EPIC's *amicus* work has supported laws ranging from restrictions on the sale of prescription drug data to statutes that restrict the disclosure of sensitive information by financial institutions. Through its *amicus* project, EPIC works with experts to file factual briefs that support consumer privacy policies. Recent examples include:

- EPIC *Amicus* Briefs, US Supreme Court 2010 Term: *NASA v. Nelson*, *FCC v. AT&T*, *Tolentino v. New York*, *Sorrell v. IMS Health*.
- EPIC's *amicus* brief was recently cited in *Sorrell v. IMS Health* by Judge Livingston in support of a Vermont law that safeguards the medical privacy interests of Vermont consumers.

- Funding from the Google Buzz *cy pres* Fund will enable EPIC to continue to file *amicus* briefs in support of consumer privacy.

EPIC's Public Education Programs – Web Presence, Newsletter, and Publications

EPIC established EPIC.ORG, the first website devoted to privacy issues, in 1994. Since that time, EPIC has provided critical resources that educate the public about emerging threats to consumer privacy. EPIC publishes websites, books, and a bi-weekly electronic newsletter concerning consumer privacy.

- EPIC maintains EPIC.ORG and PRIVACY.ORG – two of the most popular privacy websites in the world. EPIC's sites educate consumers about privacy threats. EPIC posts analyses of breaking privacy news and links to tools that help consumers safeguard their personal data. EPIC further educates Internet users through social media services, including Twitter and Facebook.
- EPIC publishes the *Privacy Law Sourcebook*, a comprehensive resource detailing laws that establish privacy safeguards and provide consumers with recourse when their privacy rights are violated. EPIC also publishes *Privacy and Human Rights*, the authoritative resource for privacy laws and developments around the world.
- EPIC publishes the EPIC Alert, a bi-weekly electronic newsletter that reaches approximately 20,000 subscribers. EPIC has published the Alert since 1994 – it is the longest-running newsletter concerning electronic privacy. The EPIC Alert is a crucial resource for consumers, policymakers, researchers, and the media.
- Funding from the Google Buzz *cy pres* Fund will continue to support EPIC's broad-based public education programs.

The EPIC Privacy Coalition

EPIC protects Internet users' privacy interests through important coalition efforts. EPIC established the Privacy Coalition in 2001 to support the work of other privacy and consumer organizations and to encourage a dialogue between the privacy community and decision makers in Washington, DC and around the world.

- Funding from the Google Buzz *cy pres* Fund will support the Privacy Coalition.

The EPIC Project On Government Accountability (POGA)

Following EPIC's successful FOIA efforts to challenge the TSA's airport body scanner program, EPIC has launched a new program to utilize the Administrative Procedure Act to ensure the accountability of federal agencies. EPIC will combine its FOIA expertise with its growing APA expertise to pursue more privacy issues on behalf of Internet users in court.

- Funding from the Google Buzz *cy pres* Fund will help EPIC launch the EPIC Project on Government Accountability.

IPIOP: Training the Next Generation of Privacy Advocates and Scholars

Since 2001, EPIC has provided formal training for law school students interested in Internet public interest work and privacy protection. Each summer, several hundred applicants apply for the 10-week long clinic-style Internet Public Interest Opportunities Program (IPIOP). Over the past decade, EPIC has trained more than 120 law school students, many of whom have gone on to work in consumer organizations, at research institutions and universities, and in federal and state government.

- Funding from the Google Buzz *cy pres* Fund will help EPIC continue to train the next generation of privacy advocates and scholars.

Summary

EPIC occupies a unique role in the privacy world. EPIC is the leading organization dedicated to Internet privacy. In fact, EPIC was founded in the campaign to make encryption, the critical technology for Internet privacy and security, widely available to Internet users. In other *cy pres* proceedings, federal judges have explicitly set aside the bulk of the *cy pres* funds to support EPIC's work. *See, e.g., Mirfasihi v. Fleet Mortgage*, No. 01 C 722 (N.D. Ill. July 17, 2007) at 2. Moreover, EPIC urges courts to ensure that *cy pres* awards in Internet privacy lawsuits genuinely benefit class members. *See, e.g.,* EPIC's January 2010 letter to Judge Richard Seeborg in *Lane v. Facebook*, No. 08-03845 (N.D. Cal. Aug. 12, 2008).

EPIC pursues a well-established, broad-based, widely regarded, and effective program that protects privacy, educates Internet users, and directly advances the interests of class members. In fact, EPIC pursued the same issues on behalf of consumers before the Federal Trade Commission that gave rise to this settlement. EPIC therefore requests a substantial part of the *cy pres* award in support of the activities outlined above.

Testimonials

EPIC has been widely cited by experts and the national media for its leadership role in the privacy field:

“EPIC is on the front lines of the most important civil liberties issues of our age.”

– Bruce Schneier, security expert

“EPIC is one of the most important civil liberties groups in the country.”

– Prof. Anita Allen, legal scholar

“EPIC does wonderful work. I admire their efforts to protect the privacy of Americans.” – James Bamford, author

“The EPIC FOIA litigation manual will help ensure that those who are pursuing open government requests understand their rights, and the best strategies to pursue their requests.” – Senator Patrick Leahy, co-sponsor of the OPEN Government Act of 2007

“The EPIC ‘Privacy Law Sourcebook’ is the Physician’s Desk Reference of the Privacy World.” – Evan Hendricks, *Privacy Times*

“EPIC is a powerful voice in Washington. I am constantly amazed by how much this dedicated group accomplishes.” – Hon. John Anderson, former Presidential candidate

“EPIC has set the benchmark for relentless and principled advocacy on the main issues of public concern about the Internet and computerization.” – *The Los Angeles Times*

“Anyone concerned about the civil rights implications of the Clipper chip, the Digital Telephony proposal, national ID cards, medical record privacy, credit records and the sale of consumer data will find this Washington public interest research center invaluable.” – *The Atlanta Journal and Constitution*

“EPIC’s Freedom of Information Act work attracts widespread praise.” – *Legal Times*

“EPIC is a public interest research center based in Washington. It offers a great collection of online resources about privacy and also provides information on how you can act politically to motivate your government representatives to protect your privacy.” – *Christian Science Monitor*

“I would highly recommend your program to law students looking to work for a leading public interest group in D.C. I would recommend the cutting edge research on privacy law as well as the high level of clerk involvement on each project.” . . . “I found the process of researching and commenting on a

proposed rulemaking to be very interesting and a great learning experience.”
... “I also liked the variety of projects and the fact that they were focused on a mission, which gave me the feeling that I was actually participating in something that mattered.” – Former EPIC Clerks